

# Vinson & Elkins

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.  
ONE AMERICAN CENTER  
SUITE 2700  
600 CONGRESS AVENUE

AUSTIN, TEXAS 78701-3200

TELEPHONE (512) 495-8400

FAX (512) 495-8612

WRITER'S TELEPHONE

(512) 495-8568

December 3, 1996

## VIA FEDERAL EXPRESS

Mr. Pasquale Evangelista  
U.S. Environmental Protection Agency  
290 Broadway, 19th Floor  
New York, New York 10007-1866

Re: Passaic Valley Sewerage Commissioners

Dear Pat:

Enclosed please find a Book of the Week concerning Passaic Valley Sewerage Commissioners' Response to EPA's Request for Information under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act.

Please do not hesitate to contact me if you or any members of your team have questions or comments. We look forward to working with you.

Very truly yours,

  
Amanda G. Birrell

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Enclosure

cc: Amelia Wagner  
Gerald R. Connolly  
Patricia C. Hick

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# MEMORANDUM

December 3, 1996

TO: Pasquale Evangelista  
FROM: Chemical Land Holdings, Inc.  
RE: Passaic Valley Sewerage Commissioners

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## **I. Purpose**

Chemical Land Holdings, Inc. ("CLH") reaffirms its request that the Agency immediately notify the Passaic Valley Sewerage Commissioners ("PVSC") that it is a potentially responsible party ("PRP") for the Passaic River Study Area ("Study Area"). The Agency has substantial evidence that the PVSC arranged for the disposal of and transported for disposal quantities of hazardous substances to the Study Area within the meaning of Sections 107(a)(3) and (a)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The Agency should not delay notifying the PVSC of its potential liability for the Study Area.

This memorandum also comments on the PVSC's Response to EPA's 104(e) Request for Information (the "Response"). There are a significant number of documents known to be in the possession of the PVSC which the PVSC failed to produce or refer to once in its Response. These documents provide relevant information on parties potentially responsible for the Study Area.

In addition, the PVSC has collected and is required under permits issued by the Agency to collect a substantial amount of information about the quantity, type, frequency and sources of hazardous substances currently discharged to the Study Area. This information bears materially on the evaluation of the condition of the Study Area and the feasibility of implementing remedies there. As CLH representatives suggested in its meeting with the Agency on July 17, 1996, the Agency should send the PVSC another 104(e) Request for Information specifically requesting the production of these documents.

## **II. Discussion**

- A. The PVSC Should **Immediately** be Notified that it is a PRP for the Passaic River Study Area

The PVSC should immediately be notified that it is a PRP for the Passaic River Study Area. The Agency has substantial evidence that the PVSC arranged for the disposal of and transported hazardous substances to the Study Area within the meaning of Sections 107(a)(3) and 107(a)(4) of CERCLA. The REPORT ON INDUSTRIAL WASTE STREAMS BYPASSED TO THE PASSAIC RIVER STUDY AREA ("*REPORT ON INDUSTRIAL WASTE STREAMS*"), submitted to the Agency in August of 1994,

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assembles the evidence that notes that the PVSC operated the combined sewer outfalls ("CSOs") that discharge to the Study Area. The *REPORT ON INDUSTRIAL WASTE STREAMS* explains how the PVSC has routinely opened the CSOs to divert untreated sewage to the Passaic River since 1924. According to the PVSC's own studies, the PVSC bypassed waste to the Passaic River frequently. The frequency and volume of bypassing is measured by the PVSC's own consultants, Killam Associates, Inc. In its *REPORT UPON OVERFLOW ANALYSIS*, Killam Associates reported that in a single twelve-month period from 1974 to 1975 (also described as a dry year), 7.6 billion gallons or roughly 8.2% of the total influent to the PVSC treatment plant, was bypassed untreated to the Passaic River. The volume of these discharges to the Passaic River far exceeds the volume of discharges attributable to any of the noticed PRPs.

The PVSC bypassed waste to the Passaic River under a variety of scenarios:

- when it rained and the volume of flow in the system threatened to exceed capacity;
- when it was necessary to reduce the flow in order to repair sewer lines;
- when discharges occurred accidentally, as when regulator equipment operated improperly; and
- when a breakdown occurred at a pumping station or the treatment plant and it was necessary to limit the flow for repairs or to prevent further damage during repairs.

See Affidavit of Seymour Lubetkin submitted along with the *REPORT ON INDUSTRIAL WASTE STREAMS*. This systematic bypassing resulted in a variety of hazardous substances being discharged to the Study Area.<sup>1</sup>

The operation by the PVSC of the CSOs delivered hazardous substances to the Study Area. The PVSC is therefore liable as an "arranger" for the disposal of hazardous substances to the Study Area within the meaning of Section 107(a)(3) of CERCLA. The PVSC is also liable as a transporter because the PVSC selected the site for disposal of hazardous substances to the Study Area within the meaning of Section 107(a)(4) of CERCLA. The documents previously provided to the Agency confirm that the PVSC should be notified that it is a PRP. There is no reason for the Agency to delay any further in notifying the PVSC of its potential liability for the Study Area.

B. The PVSC Has a Significant Amount of Information Relevant to the Agency's Evaluation of the Passaic River Study Area

The PVSC has a substantial amount of information relevant to the Agency's evaluation of both the parties potentially liable for conditions in the Study Area and the quantity, frequency, sources and nature of materials discharged to the Study Area. The PVSC should be required to produce this information.

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<sup>1</sup> Several studies document the types of hazardous substances found in the influent to the PVSC. See e.g., *REPORT UPON INVESTIGATION OF ORGANIC PRIORITY POLLUTANTS TO THE PASSAIC VALLEY SEWERAGE PLANT*, CFM, Inc., May 1996; PVSC, *HEAVY METALS SOURCE DETERMINATION*, 1978; *NATIONAL SEWAGE SLUDGE SURVEY*, EPA, 1988.

In the Agency's 104(e) Request for Information to the PVSC, the Agency provided the PVSC with a list of 61 companies, requesting the PVSC to indicate companies about which the PVSC had information. In its Response, the PVSC indicated that it does not have information on the activities of more than thirty parties about which the Agency requested information. We believe the PVSC has relevant information regarding the majority of these parties: CLH representatives have personally reviewed this information at the PVSC, obtained copies of the records, and submitted the copies to the EPA.

For example, the PVSC stated that it had no information on Reilly Tar. However, CLH provided the Agency with a copy of a 1948 PVSC Stream Contamination Report which discussed oil and tar drainage from the Reilly Tar site to the Roanoke Avenue storm sewer. See the table attached at Tab A for a listing of other documents obtained from the PVSC regarding companies for whom the PVSC indicated it had no information. This table identifies documents CLH has located in the PVSC's files, but PVSC has not permitted CLH access to all its files. The CLH table should not, therefore, be considered a complete list of all records PVSC has that are or may be responsive to the Agency's request or material to the Agency's evaluation of the condition of the Study Area, the persons responsible for the Study Area or the appropriate remedy, if any.

Even so, this table lists, in addition to specific files the PVSC maintains on industrial users, general records relevant to various parties identified in the Agency's 104(e) request. These records include PVSC River Inspection Reports, Stream Contamination and Pollution Reports, PVSC Annual Reports, and Weekly Summaries of Inspections. The Agency should request the PVSC to produce these specific, relevant documents known to be in their possession and control as well as other responsive documents.

The PVSC also has information material to the evaluation of the quantity, frequency, and type of substances discharged to the Study Area. The Agency has long been aware that the PVSC maintains accurate records of the frequency and extent of bypassing. See Affidavit of Seymour Lubetkin submitted with the *REPORT ON INDUSTRIAL WASTE STREAMS*. The PVSC uses these records to compute billing records. *Id.* This practice continues to the present day: currently the PVSC maintains a log that shows the time each of the outfalls is opened and the time it is closed. A copy of a sample of these logs is attached as Tab B. The PVSC then uses these logs to compute the amount of material bypassed, now referred to as "throw out," annually. A copy of these calculations for 1995 is attached as Tab C.

In addition, the PVSC currently holds a permit for the operation of the CSOs. A copy of this general permit is attached as Tab D. Under this general permit, in order, in part, to comply with the Agency's own CSO Control Policy, the PVSC is required to collect and report data about the extent and nature of its discharges to the Passaic River Study Area. These data bear materially on the evaluation of the Passaic River Study Area required under CERCLA, the National Contingency Plan and the Administrative Order on Consent.<sup>2</sup> Examples of the data required to be collected by the permit include a detailed evaluation of dry weather overflows and a plan for the reduction of floatables.

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<sup>2</sup> See Carol Dinkins' letter to Delmar Karlen dated May 15, 1996.

C. Second 104(e) Request for Information

We recommend that the Agency send the PVSC a second 104(e) Request for Information requesting copies of specific documents that the PVSC is known to have its possession and control. Attached at Tab E is a sample list of questions to submit to the PVSC to obtain the information known to be in possession of the PVSC as well as to elicit a more thorough search by the PVSC for potentially relevant documents.